United States Court of Appeals

for the Second Circuit

BRIEF FOR APPELLEE

Affidavit

76-6093

To be argued by
WILLIAM G. BALLAINE

United States Court of Appeals

B
P/S

FOR THE SECOND CIRCUIT

Docket No. 76-6093

LE BEAU TOURS INTER-AMERICA, INC.,
Plaintiff-Appellant,

—against—

UNITED STATES OF AMERICA,
Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR DEFENDANT-APPELLEE

ROBERT B. FISKE, JR.,
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WILLIAM R. BRONNER,
Assistant United States Attorneys, Of Counsel.

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(a) Gross income from sources within United States.

The following items of gross income shall be treated as income from sources within the United States:

* * * * *

(3) Personal services.

Compensation for labor or personal services performed in the United States; except that compensation for labor or services performed in the United States shall not be deemed to be income from sources within the United States if——

(A) The labor or services are performed by a nonresident alien individual temporarily present in the United States for a period or periods not exceeding a total of 90 days during the taxable year,

(B) such compensation does not exceed $3,000 in the aggregate, and

(C) the compensation is for labor or services performed as an employee of or under a contract with——

(i) a nonresident alien, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, or

(ii) an individual who is a citizen or resident of the United States, a domestic partnership, or a domestic corporation, if such labor or services are performed for an office or place of business maintained in a foreign country or in a possession of the United States by such individual, partnership, or corporation.

* * * * *

(6) Sale of personal property.

Gains, profits, and income derived from the purchase of personal property without the United States (other than within a possession of the United States) and its sale within the United States.

26 U.S.C. § 862:

§ 862. Income from sources without the United States.

(a) Gross income from sources without United States.

The following items of gross income shall be treated as income from sources without the United States.

* * * * *

(3) compensation for labor or personal services performed without the United States;

* * * * *

(6) gains, profits, and income derived from the purchase of personal property within the United States and its sale without the United States.

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Items of gross income, expenses, losses, and deductions, other than those specified in sections 861(a) and 862(a), shall be allocated or apportioned to sources within or without the United States, under regulations prescribed by the Secretary or his delegate.

* * * * *

(b) Income partly from within and partly from without the United States.

In the case of gross income derived from sources partly within and partly without the United States, the taxable income may first be computed by deducting the expenses, losses, or other deductions apportioned or allocated thereto and a ratable part of any expenses, losses, or other deductions which cannot definitely be allocated to some item or class of gross income; and the portion of such taxable income attributable to sources within the United States may be determined by processes or formulas of general apportionment prescribed by the Secretary or his delegate. Gains, profits, and income——

(1) from transportation or other services rendered partly within and partly without the United States,

(2) from the sale of personal property produced (in whole or in part) by the taxpayer within and sold without the United States, or produced (in whole or in part) by the taxpayer without and sold within the United States, or

(3) derived from the purchase of personal property within a possession of the United States and its sale within the United States, shall be treated as derived partly from sources within and partly from sources without the United States.

26 U.S.C. § 921:

§ 921. Definition of Western Hemisphere trade corporations.

For purposes of this subtitle, the term "Western Hemisphere trade corporation" means a domestic corporation all of whose business (other than incidental purchases) is done in any country or countries in North, Central, or South America, or in the West Indies, and which satisfies the following conditions:

(1) if 95 percent or more of the gross income of such domestic corporation for the 3-year period immediately preceding the close of the taxable year (or for such part of such period during which the corporation was in existence) was derived from sources without the United States; and

(2) if 90 percent or more of its gross income for such period or such part thereof was derived from the active conduct of a trade or business.

* * * * *

26 U.S.C. § 922:

§ 922. Special deduction.

In the case of a Western Hemisphere trade corporation there shall be allowed as a deduction in computing taxable income an amount computed as follows——

(1) First determine the taxable income of such corporation computed without regard to this section.

(2) Then multiply the amount determined under paragraph (1) by the fraction——

(A) the numerator of which is 14 percent, and

(B) the denominator of which is that percentage which equals the sum of the normal tax rate and the surtax rate for the taxable year prescribed by section 11.

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 76-6093

LE BEAU TOURS INTER-AMERICA, INC.,
Plaintiff-Appellant,

—against—

UNITED STATES OF AMERICA,
Defendant-Appellee.

BRIEF FOR DEFENDANT-APPELLEE

Statement of the Case

This is an appeal from a judgment dismissing the tax refund claims of plaintiff, LeBeau Tours Inter-America, Inc., for 1966, 1967 and 1968. JA-73.* The judgment resulted from a decision of the Honorable Lee P. Gagliardi, United States District Judge, filed May 20, 1976, granting the motion of defendant, United States, for summary judgment. JA-70-72. Previously, by memorandum decision dated March 10, 1976, the Court had denied the Government's motion for summary judgment as well as plaintiff's motion for similar relief on the ground that a specified material fact was in dispute. JA-56-65. The disputed

* "JA—" refers to the Joint Appendix filed in connection with this appeal.

fact was thereafter stipulated (JA-68-69), and the Court, adhering to its previous decision regarding the law, determined that LeBeau did not qualify for favorable tax treatment under Sections 921 and 922 of the Internal Revenue Code of 1954 (the "Code"), 26 U.S.C. §§ 921 and 922, as a Western Hemisphere trade corporation for the three tax years in suit. Judgment was entered by the Clerk on June 4, 1976.

Statement of Facts

Since 1962, LeBeau Tours Inter-America, Inc. ("LeBeau Inter-America") and its sister corporation, LeBeau Tours, Inc. ("Tours"), have been engaged in the travel business. These corporations, which have common officers and ownership, engage in essentially the same activities. LeBeau Inter-America, however, was organized for the sole purpose of qualifying as a Western Hemisphere trade corporation, within the meaning of 26 U.S.C. § 921, and restricts its sphere of action to the Western Hemisphere south of the United States. JA-44.

During the relevant years, LeBeau Inter-America procured so-called "package tours" in Central and South American countries, then promoted and marketed these packaged tours in the United States. The packages included hotel accommodations, land transportation and escort (guide) services as needed. In promoting and marketing the package tours to American customers, LeBeau Inter-America acted as a wholesale travel agent which used retail travel agents located in this country. The American customer paid for the hotel and ground operator services at the same rate as applied to any other retail customer of these foreign enterprises. LeBeau Inter-America received the full retail price paid by each American customer at its New York office. Pursuant to

agreement with the foreign enterprises, plaintiff then remitted to the foreign hotel and ground operators a lesser sum. The retained sum (which LeBeau Inter-America calls its "commission"), less expenses, was plaintiff's profit. All of the foreign hotel and ground operators with whom plaintiff dealt were independent contractors. JA-7-8, 16, 29-30, 44-47.

A New York Corporation, plaintiff maintained its New York office in the office of Tours. LeBeau Inter-America's marketing and promotional activities were performed through Tours' employees in New York. Tours' New York employees also handled LeBeau Inter-America's bookkeeping, its accounts receivable and payable, and generally ran plaintiff's day-to-day business affairs. JA-8, 30, 45-57; Appellant's Br. 4. Tours charged LeBeau Inter-America a lump sum amount for these services, a charge which amounted to substantially more than 5 percent of plaintiff's gross income during the tax years in issue. JA-8, 17-28, 30. In addition, more than 5 percent of the time of persons performing services in connection with LeBeau Inter-America's tour business was spent within the United States. This time related only to those services which brought income to LeBeau Inter-America. JA-64, 68.

For the tax years in issue, LeBeau Inter-America reported "gross receipts" which equaled the total sums collected from its American customers and received at plaintiff's New York office. Plaintiff reported as "cost of goods sold" the lesser sums which it remitted to the foreign hotels and ground operators. The difference constituted plaintiff's reported "gross income". Plaintiff's tax refund claims arise out of defendant's refusal to allow deductions claimed by plaintiff under 26 U.S.C. §§ 921 and 922. JA-44-47. Plaintiff pays no income, sales, property or other taxes in any foreign country. JA-46.

Issue Presented for Review

The sole issue presented is whether the District Court was correct in determining that, for the three years previous to the close of each tax year in issue, LeBeau Inter-America derived less than 95 percent of its gross income from "sources without the United States," within the meaning of 26 U.S.C. § 921.

ARGUMENT

POINT I

Plaintiff Does Not Qualify For Western Hemisphere Trade Corporation Treatment.

As defined by Section 921 of the Code, 26 U.S.C. § 921, a Western Hemisphere trade corporation ("WHTC") is (1) a domestic corporation doing all its business in the Western Hemisphere, which (2) derives 95 percent or more of its gross income for the three-year period immediately prior to the close of the tax year "from sources without the United States", and (3) derives 90 percent or more of its gross income from the active conduct of a trade or business.* For purposes of this appeal, there is no dispute about the first and third criteria. This

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* The Congressional purpose of this provision is somewhat murky. It is usually stated, however, that the announced purpose was to permit American corporations to compete on an equal footing in Western Hemisphere trade with foreign (European) corporations. *United States Gypsum Co.* v. *United States*, 304 F. Supp. 627, 642 (N.D. Ill. 1969), *aff'd in part*, 452 F.2d 445 (7th Cir. 1971). As plaintiff notes (Appellant's Br. 20, n.21), the WHTC tax benefits are being phased out by Congress.

appeal focuses on whether plaintiff can satisfy the second requirement.*

Pertinent Treasury regulations provide that the amount of gross income "from sources without the United States", as that phrase is used in Section 921, must be determined by reference to Sections 861 *et seq.* of the Code. Treas. Reg. § 1.921-1(c). Code Sections 861-863 categorize all possible types of income as coming from sources within the United States, from sources without the United States, or from sources partly within and partly without the United States. 26 U.S.C. §§ 861-863.

For purposes of applying Sections 861-863, and the regulations thereunder, it is necessary to classify the nature of the business which generated LeBeau Inter-America's gross income. Only two possible classifications need be considered: (1) treating LeBeau Inter-America as a seller of personal property; or (2) treating it as engaged in a service business. Each of these alternatives will be examined to demonstrate that, under either alternative, less than 95 percent of plaintiff's gross income was derived "from sources without the United States," precluding plaintiff from taking advantage of WHTC deductions under Sections 921 and 922.

A. Alternative I—Plaintiff Is Engaged In The Sale Of Personal Property

In its tax returns for the years in question, plaintiff followed the accounting practice of listing "gross receipts"

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* In the District Court, the United States contended that LeBeau Inter-America was a "sham", and as such could not satisfy the third requirement listed above. This issue, which concededly required proof of disputed facts, was not and could not be decided by the District Court by means of summary judgment. JA-49-55, 57-58; *see*, Point II, *infra*.

(the total sums collected by plaintiff in New York from American customers) and deducting therefrom "cost of goods sold" (the lesser sums remitted by plaintiff to foreign hotels and ground operators) to get "gross income." JA-17-28, 47-48. From gross income, plaintiff deducted the expenses of running its business. JA-17-28. By adopting this method of reporting, plaintiff, in effect, treated its gross income as derived from merchandising, not from a service business. *See*, 26 U.S.C. § 61(a) and Treas. Reg. § 1.61-3(a).* Assuming, *arguendo*, that this is a proper characterization of plaintiff's business, plaintiff cannot meet the "source" requirement of Section 921.

"Merchandising" is not defined in the Code. Black's Law Dictionary, however, defines the term "merchandise" as:

> "Whatever is usually brought and sold; or all commodities which merchants usually buy and sell, whether at wholesale or retail."

If plaintiff is in the business of merchandising, it is acting as a principal, buying a right or chose in action from enterprises abroad and reselling it to American customers, rather than as an agent, providing services as a form of broker between American customers and these foreign enterprises. Viewing plaintiff's business in this fashion, Section 861(a)(6) of the Code applies:

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* Treas. Reg. § 1.61-3(a) provides, *inter alia*:
"In a manufacturing, merchandising or mining business, 'gross income' means the total sales, less the cost of goods sold, plus any income from investments and from incidental or outside operations or sources."

"(a) **Gross income from sources within the the United States.**

The following items of gross income shall be treated as income from sources within the United States:

* * * * *

(6) Sale of personal property.

Gains, profits, and income derived from the purchase of personal property without the United States . . . and its sale within the United States."

26 U.S.C. § 861(a)(6). Every "sale" from plaintiff, viewed as owner of the property, to its American customer takes place within the United States. Plaintiff promotes its business and solicits its customers entirely within this country; and it completes each transaction when it sells a package tour here and receives the purchaser's payment in New York. Whatever title or incidents of ownership there are to be sold by plaintiff must necessarily pass within this country. Such passage of title within the United States requires the conclusion that the income from each sale is derived from sources within this country. *See, Commissioner* v. *Pfaudler Inter-American Corp.*, 330 F.2d 471, 474 (2d Cir. 1964).

Plaintiff's brief on this appeal suggests a contrary result.* Plaintiff seems to assert that title passage takes

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* Plaintiff's position on this appeal is that it is engaged in a service, not a merchandising, business. *See,* Appellant's Br. 5-6. Nonetheless, it cites extensive legal authority relating to the taxpayer's sale of personal property.

place abroad because it is there that the foreign enterprises confirm bookings and perform the services purchased. Appellant's Br. 14-15. This contention necessarily assumes that the seller is not LeBeau Inter-America, but the foreign enterprises. If, indeed, the foreign enterprises are the true sellers, plaintiff is only an agent rendering services on their behalf. If, however, plaintiff has purchased the *right* to the facilities and services of these enterprises, its resale of that right (as distinct from rendering of the services which that right entails) clearly takes place in this country, not abroad.

In summary, if plaintiff's business is viewed as involving the sale of personal property, the sums received by plaintiff constitute income derived from sources within the United States. Accordingly, under this view, plaintiff is not entitled to the WHTC benefits of Sections 921 and 922 of the Code.

B. Alternative II—Plaintiff Is Engaged In Providing A Service.

The more logical view of plaintiff's business is that it is engaged in providing a service. This is the view of plaintiff's business which the District Court adopted. JA-60. It also is the view taken by plaintiff on this appeal. Appellant's Br. 5, 6. Considered as a service business, LeBeau Inter-America still does not satisfy the source requirement of Section 921 of the Code.

With respect to a service business, the test of what is foreign source income and what is domestic income is

based upon where the income-producing services are performed. 26 U.S.C. §§ 861(a)(3) and 862(a)(3); *Tipton and Kalmbach, Inc.* v. *United States*, 480 F.2d 1118, 1120 (10th Cir. 1973); *United States* v. *Woodmansee*, 388 F. Supp. 36, 44 n.24 (N.D. Cal. 1975); *William N. Dillin*, 56 T.C. 228, 244 (1971). Plaintiff argues that such services were rendered entirely abroad. Analysis demonstrates otherwise.

Plaintiff describes its business activities as arranging a package of hotel accommodations, transportation, escort services and assistance offices. Appellant's Br. 6, 9, 12 and 18. This does not go far enough. Plaintiff also promotes the tour package in this country, procures American customers, and collects payment in full from these customers, in advance of their trip, for transmittal through to the foreign enterprises. Further, it performs the day-to-day administrative activities which necessarily are an integral part of its entire operation within and/or without the United States. All these activities are performed within the United States, at plaintiff's New York office. JA-8, 30, 45-47; Appellant's Br. 4. Plainly, these New York-based activities constitute a significant portion of the services which plaintiff performs to generate its gross income. Indeed, plaintiff's gross income, in the form of what plaintiff calls commissions, is a direct function of its successful promotion of its package tours and the receipt of payments from customers.

The fact that these critical promotional, procurement, collection and administrative activities are performed by employees of Tours is of no significance. These income-producing activities were rendered on plaintiff's behalf, and plaintiff paid for them. Regardless of whether these activities are performed by an "independent contractor" or by plaintiff's own employees, their character

as personal services of plaintiff, and the resulting tax consequences, remain the same. *See, Helvering* v. *Boekman*, 107 F.2d 388, 389 (2d Cir. 1939).

To avoid the conclusion that a significant portion of its services are rendered within the United States, plaintiff relies heavily upon *Commissioner* v. *Piedras Negras Broadcasting Co.*, 127 F.2d 260 (5th Cir. 1942).* As the District Court observed, however, *Piedras Negras Broadcasting* is distinguishable on its facts. JA-65, 72. In that action, American customers were solicited in the United States by the taxpayer broadcasting station and payments for advertising were made here. These activities, however, were not part of the *services* being rendered by the taxpayer to its American customers. The American customers were paying for the broadcasting of their advertisements, and this service, the Fifth Circuit found, was performed from Mexico, from where the broadcasts originated. In the instant suit, Le Beau Inter-America is not simply providing a service to American customers by putting together package tours abroad. It also is providing a significant service to the foreign enterprises—from whom it receives its income— by soliciting and procuring American customers and collecting the customers' payments for forwarding to the foreign businesses. In short, the solicitation, procurement and collection activities were not the services for which the taxpayer was paid by its American customers in *Piedras Broadcasting*, but they are services for which plaintiff is

* Plaintiff's brief on this appeal cites extensive legal authority involving income derived from the taxpayer's sale of personal property. Since plaintiff contends that the income in issue here is derived from services, not the sale of personal property, this cited authority is inapposite. Different source tests apply where income is derived from the sales of personal property and where it is derived, as here, from the rendering of services. *Compare* 26 U.S.C. §§ 861(a)(6), 362(a)(6) and *Commissioner* v. *Pfaudler Inter-American Corp., supra*, 330 F.2d 471 *with* 26 U.S.C. §§ 861(a)(3), 862(a)(3) and *Tipton and Kalmbach, Inc.* v. *United States, supra*, 480 F.2d 1118.

paid by foreign hotels and ground operators in the present action.*

A better analogy to plaintiff's situation is found in *Helvering* v. *Boekman*, *supra*, 107 F.2d 388. In *Boekman*, the taxpayer was a foreign commodity broker who employed a clerk in the quarters of an American broker to receive purchase or sale orders and select an American exchange broker to execute these orders. The American broker cleared the transaction, remitting to the foreign broker the proceeds of a sale or collecting from him those of a purchase. The Second Circuit held that the half-commissions retained by the foreign broker constituted income for personal services derived from sources within the United States. *Helvering* v. *Boekman*, *supra*, 107 F.2d at 389. We submit that the nature of the services provided by plaintiff on behalf of the foreign hotels and ground operators is not unlike the services rendered by the foreign broker in *Boekman*. Thus, to the extent that plaintiff's self-styled commissions are for plaintiff's broker-type services, they must, as in *Boekman*, be treated as derived from sources within the United States.

Since it is established that plaintiff's gross income is derived at least in part from sources within the United States, the remaining question is whether more than five percent of plaintiff's income is so derived, in which case plaintiff cannot meet the source requirement of Section

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*If the taxpayer here were one of the foreign hotels or ground operators, the analogy to *Piedras Negras Broadcasting* would be more apt. As to these foreign enterprises, the only significant income-producing services would be the provision of hotel accommodations, ground transportation and escort services. Plaintiff, however, is distinct from and cannot stand in the place of these foreign enterprises for purposes of analyzing the nature of its income-producing services.

921. The District Court concluded that the determination was properly made by reference to Treas. Reg. § 1.861-4(b)(2), which applies to tax years beginning before January 1, 1976:

> "If no accurate allocation or segregation of compensation for labor or personal services performed in the United States can be made, or when such labor or service is performed partly within and partly without the United States, the amount to be included in the gross income shall be determined by an apportionment on the time basis; that is, there shall be included in the gross income an amount which bears the same relation to the total compensation as the number of days of performance of the labor or services within the United States bears to the total number of days of performance of labor or services for which the payment is made."

This same regulation was used to apportion income by the Tenth Circuit Court of Appeals in *Tipton and Kalmbach, Inc.* v. *United States, supra*, 480 F.2d 1118. Plaintiff has stipulated that the amount of time spent in New York by or on behalf of Le Beau Inter-America exceeds five percent of plaintiff's activity in connection with its Latin American tours (JA-68), thereby conceding that less than 95 percent of its gross income is derived from sources within this country.

Plaintiff does not suggest that the allocation method used by the District Court was the wrong method. Nor does it suggest an alternative method.* Le Beau Inter-

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* Treas. Reg. 1.861-4(b)(1), applicable to taxable years after 1975, calls for apportionment "on the basis that most correctly reflects the proper source of income under the facts and circumstances of the particular case," adding that in "many cases" a

[Footnote continued on following page]

America simply insists that despite its promotional, procurement, collection and administrative activities in this country, no source allocation is warranted because, under *Piedras Negras Broadcasting*, these activities are legally irrelevant to the determination of the source of its gross income. As indicated previously, however, plaintiff's reliance is misplaced.* The broker-type relationship between plaintiff and the foreign enterprises indicates that plain-

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time basis will be acceptable. If here we used a cost, rather than a time basis, the result would be the same. Plaintiff's expenses for New York activities (which were 29 percent or more of its gross income for the three tax years) appear to have far exceeded in dollar volume the sum of all other expenses in any year. *See*, JA-17-28, 46.

It should be noted that Treas. Reg. § 1.863-3(b)(2) contains illustrative examples of methods of allocation for income from sources partly within and partly without the United States. *See*, Treas. Reg. § 1.863-3(b)(2), Examples (1), (2) (3). These examples relate to the sale of personal property. Nonetheless, if we refer to these examples by way of analogy, plaintiff still cannot prevail. Example (1) clearly is unavailable to plaintiff because the "producers" (the foreign hotels) do not "regularly" sell part of their output to "wholly independent distributors" (plaintiff) for resale to retail customers (retail travel agents or American customers). Example (3) is unavailable because plaintiff did not make the required application to the Internal Revenue Service. Example (2) essentially covers situations where example (1) is not established. It provides for a formula which involves, in part, a comparison of gross sales within and without the United States. As indicated in Point I, *supra*, all of plaintiff's sales are within this country. If example (2) were applied, at least 25 percent of its gross income would be considered from sources within the United States.

* Plaintiff's situation is like that of the American-based independent contractor who was the broadcasting station's advertising agent in *Piedras Negras Broadcasting*. We submit that if the taxpayer before the Fifth Circuit had been this agent, not the broadcasting station, the Court would have found that the income the agent received from the station for its services was derived from "sources within the United States."

tiff's New York-based activities constitute a considerable service to these foreign enterprises, requiring that at least part of its gross income be treated as from sources within this country. Plaintiff, in effect, concedes that if any portion of its income is so treated, the percentage exceeds five percent. Accordingly, the District Court properly concluded that plaintiff is not entitled to WHTC treatment under Section 921 of the Code.

POINT II

Plaintiff Was Not Entitled To Summary Judgment.

Plaintiff on this appeal argues for reversal and the granting of summary judgment in its favor. Assuming plaintiff could establish that it meets the source requirement of Section 921, which it cannot, it still is not entitled to summary judgment against the United States.

In the District Court, the Government preserved its right to prove that plaintiff is a sham corporation. If plaintiff is a sham, plaintiff is not entitled to the tax benefits of Sections 921 and 922 of the Code. *See, United States Gypsum Co.* v. *United States, supra,* 304 F. Supp. at 841; *cf. Commissioner* v. *Pfaudler Inter-American Corp., supra,* 330 F.2d at 475. The District Court, quite properly, declined to pass on this sham issue because it raised unresolved factual questions. JA-57-58. Such unresolved questions preclude the summary judgment relief plaintiff now seeks. *Heyman* v. *Commerce and Industry Insurance Co.,* 524 F.2d 1317 (2d Cir. 1975).

CONCLUSION

The judgment dismissing plaintiff's complaint should be affirmed, and the United States should be awarded its costs on this appeal.

Dated: New York, New York
September 20, 1976

Respectfully submitted,

ROBERT B. FISKE, JR.,
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WILLIAM G. BALLAINE,
WILLIAM R. BRONNER,
Assistant United States Attorneys, Of Counsel.

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AFFIDAVIT OF MAILING

CA 76-6093

State of New York)
County of New York) ss

Marian J. Bryant being duly sworn, deposes and says that she is employed in the Office of the United States Attorney for the Southern District of New York.

That on the 24th day of September, 1976 she served ~~a~~ two copys of the within printed Brief of Defendant-Appellee

by placing the same in a properly postpaid franked envelope addressed:

Frank G. Opton
Lynton, Klein, Opton & Saslow
100 Park Avenue
New York, New York 10017

And deponent further says she sealed the said envelope and placed the same in the mail chute drop for mailing in the United States Courthouse Annex, One St. Andrews Plaza, Borough of Manhattan, City of New York.

Marian J. Bryant

Sworn to before me this
24th day of September, 1976

Ralph I. Lee

RALPH I. LEE
Notary Public, State of New York
No. 41-2292838 Queens County
Term Expires March 30, 1977